

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

MARTIN MALYO,

Plaintiff,

v.

Case No. 3:20-cv-1074-BJD-JRK

U.S. DEPARTMENT OF HOMELAND  
SECURITY and U.S. CITIZENSHIP  
AND IMMIGRATION SERVICES,

Defendants.

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**ORDER**

This cause is before the Court on Plaintiff's Motion for Entry of Clerk's Default (Doc. No. 18; "Motion"), filed August 20, 2021. Upon due consideration, the Motion is due to be denied without prejudice for the reasons set forth herein.

Plaintiff initiated this action by filing a Complaint (Doc. No. 1) on September 24, 2020. Pursuant to Court Order, see Order (Doc. No. 9), entered January 11, 2021, Plaintiff filed his Second Amended Complaint on February 11, 2021, see Complaint for a Civil Case (Doc. No. 10). Plaintiff was further ordered, no later than March 10, 2021, to provide the Clerk's Office with the required paperwork for the Marshals to serve Defendants with process. See Order (Doc. No. 12), entered February 12, 2021, at 6. On April 13, 2021, Plaintiff filed executed Summonses as to both Defendants. See Process Receipts and Returns (Doc. Nos. 15, 16); see also Summons in a Civil Action (Doc. No. 14).

Thereafter, the instant Motion was filed. Pursuant to Rule 55, Federal Rules of Civil Procedure (“Rule(s)”), Plaintiff seeks the entry of a clerk’s default for both Defendants since they “failed to file an answer or otherwise respond[.]” Motion at 1; see also Fed. R. Civ. P. 55(a). Upon review of the entire record, it appears that Plaintiff did not perfect service of process in the manner required by the Rules. Rule 4 sets out the requirements for serving the United States of America and its agencies. See Fed. R. Civ. P. 4(i). Specifically, Rule 4(i) states as follows:

(2) Agency; Corporation; Officer or Employee Sued in an Official Capacity. To serve a United States agency . . . **a party must serve the United States** and also send a copy of the summons and of the complaint by registered or certified mail to the agency . . . .

Fed. R. Civ. P. 4(i)(2) (emphasis added). While Plaintiff did serve the government agencies named as Defendants, he did not serve the United States.

To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint **to the United States attorney for the district where the action is brought**—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—**or**

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of [the summons and of the complaint] by registered or certified mail **to the Attorney General of the United States at Washington, D.C.**; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

Fed. R. Civ. P. 4(i)(1) (emphasis added). Plaintiff must serve the United States Attorney (or the alternative individuals mentioned above in Rule 4(i)(1)(A)(i)-(ii)) for the Middle District of Florida since he filed suit in this district. Further, Plaintiff must also serve the Attorney General of the United States at Washington D.C. Accordingly, it is

**ORDERED:**

1. Plaintiff's Motion for Entry of Clerk's Default (Doc. No. 18) is **DENIED without prejudice.**

2. No later than **September 30, 2021**, Plaintiff shall submit to the Clerk's Office completed summonses for both the United States Attorney for the Middle District of Florida and the Attorney General of the United States; the Second Amended Complaint; and two (2) Form USM285 for forwarding to the United States Marshal to serve the United States Attorney for the Middle District of Florida and the Attorney General of the United States in accordance with Rule 4 as described in this Order.

3. No later than **October 29, 2021**, Plaintiff shall file such proof of service with the Court.

**DONE AND ORDERED** in Jacksonville, Florida on August 25, 2021.

  
JAMES R. KLINDT  
United States Magistrate Judge

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Copies to:  
Pro Se Party